

REMARKS

STATUS:

Claims 1 – 9 are pending in the application and claim 9 has been withdrawn from examination. The applicant respectfully asserts that the claims as previously amended are allowable in light of the prior art references cited. Specifically, independent claims 1 and 5 recite limitations that are not anticipated, taught or suggested by the prior art references cited by the Examiner taken individually or in combination.

Claims 1,2, 4-7 stand rejected under 35 U.S.C 102 (b) as being anticipated by Ruth et al. (3,698,487). Also claims 3 and 8 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over Ruth et al. in view of Tate (6,00,152).

LEGAL PRINCIPLES:

In order to anticipate the claimed invention under 35 U.S.C. 102(b), the reference must teach or anticipate all limitations of the claimed invention. A claim is anticipated only if each and every element as set forth in that claim is expressly or inherently found or described in the Examiner's cited reference. The identical invention to that claimed must be shown in complete detail in the cited reference. The Applicant contends that Ruth not teach or anticipate all claim limitations of claims 1, 2, and 4-7 as amended herein.

To establish a prima facie case of obviousness under 35 U.S.C. 103 (b), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable

expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claim combination or combine the references and the reasonable expectation of success must both be found in the prior art and not based on the Applicant's disclosure. The Applicant contends that Ruth and the other references cited by the Examiner, including Tate, taken individually or in combination do not teach or suggest all the limitations of the claims as amended.

APPLICANT'S RESPONSE:

The Applicant's response is consistent with the Examiner (PE Victor Batson) interview on Thursday June 08, 2006.

With regard to independent claim 1, the Examiner rejects claim 1 as being anticipated by Ruth arguing that item 21 of Ruth teaches a vertical telescoping arm. However, the telescoping arm of Ruth is not adapted to be mounted on an implement of a heavy machinery such as for example adapted to be mounted to a blade implement of a grader. Further the vertical telescoping arm of Ruth, item 21, does not have a substantially orthogonally mounted culvert cleaning tool having a convex upward facing surface. To the contrary the vertical telescoping arm of Ruth is attached to a horizontally oriented telescoping arm, which is attached to a blade implement. Further Ruth does not teach a parallel side by side telescoping ram attached, item 30 of the applicant's present invention, which is a separate limitation from the telescoping arm. Ruth does not teach a culvert cleaning tool and further does not teach a culvert cleaning tool attached to a vertical telescoping arm and having a convex upward facing surface. Ruth to the contrary teaches a horizontal telescoping arm having a blade implement attached to the inner concentric arm. The Examiner recites piston rod 43 and blade 35 of Ruth in combination to

teach a culvert cleaning tool having a convex upward facing surface that is mounted to the vertical telescoping arm of the applicant's present invention. However, when referring to Figures 10 and 5 of Ruth items 43 (piston) and 35 (dozer blade) are in no way combined. Piston 43 is attached to outer cylinder 36 by way of bracket 44 and dozer blade 35 is attached to inner cylinder 46 by way of brackets 47. Further the dozer blade can not be construed as a culvert cleaning tool having a convex upward facing surface because the upward facing surface of the blade is the edge, which is not convex – see Figs. 3, 4, and 6 of Ruth. Further the blade would not be operable to be inserted into a culvert. The piston 43 taught by Ruth is also not analogous to a culvert cleaning tool. Further the piston 43 as shown in Ruth is not orthogonally mounted to the cylinder and piston unit 21, but is mounted in a parallel side by side relationship to the outer support member 36 as shown in Fig. 8 of Ruth.

Based on the above, the applicant asserts that the Ruth reference does not anticipate claim 1 because all elements are not taught by Ruth. Specifically Ruth does not teach a culvert cleaning tool having a convex upward facing surface orthogonally mounted to a vertical telescoping arm and further does not teach a substantially parallel side-by-side telescoping ram. Further Ruth and the other references cited by the Examiner including Tate taken individually or in combination does not teach or suggest these limitations. The Examiner should also note that independent claim 1 has been amended to add an indefinite article before the term “heavy machinery” to clarify that the “implement” is an implement of a heavy machinery.

With regard to independent claim 5, the Examiner rejects claim 5 as being anticipated by Ruth arguing that item 21 of Ruth teaches a vertical telescoping arm. However, the telescoping arm of Ruth is not adapted to be mounted on an implement of a heavy machinery such as for

example adapted to be mounted to a blade implement of a grader. Further the vertical telescoping arm of Ruth 21 does not have a substantially orthogonally mounted culvert cleaning tool having a convex upward facing surface. To the contrary the vertical telescoping arm of Ruth is attached to a horizontally oriented telescoping arm, which is attached to a blade implement. Ruth does not teach a culvert cleaning tool and further does not teach a culvert cleaning tool attached to a vertical telescoping arm and having a convex upward facing surface. Ruth to the contrary teaches a horizontal telescoping arm having a blade implement attached to the inner concentric arm. The Examiner recites piston rod 43 and blade 35 of Ruth in combination to teach a culvert cleaning tool having a convex upward facing surface that is mounted to the vertical telescoping arm of the applicant's present invention. However, when referring to Figures 10 and 5 of Ruth items 43 (piston) and 35 (dozer blade) are in no way combined. Piston 43 is attached to outer cylinder 36 by way of bracket 44 and dozer blade 35 is attached to inner cylinder 46 by way of brackets 47. Further the dozer blade can not be construed as a culvert cleaning tool having a convex upward facing surface because the upward facing surface of the blade is the edge of the blade, which is not convex – see Figs. 3, 4, and 6 of Ruth. Further the blade would not be operable to be inserted into a culvert. The piston 43 taught by Ruth is also not analogous to a culvert cleaning tool. Further the piston 43 as shown in Ruth is not orthogonally mounted to the cylinder and piston unit 21, but is mounted in a parallel side-by-side relationship to the outer support member 36 as shown in Fig. 8 of Ruth.

Based on the above, the applicant asserts that the Ruth reference does not anticipate claim 5 because all elements are not taught by Ruth. Specifically Ruth does not teach a culvert cleaning tool having a convex upward facing surface orthogonally mounted to a vertical

telescoping arm. Further Ruth and the other references cited by the Examiner including Tate taken individually or in combination does not teach or suggest these limitations. The Examiner should also note that independent claim 5 has been amended to add an indefinite article before the term “heavy machinery” to clarify that the “implement” is an implement of a heavy machinery.

With regard to dependent claims 2, 4, 6 and 7 rejected under 35 U.S.C. 102(b) as being anticipated by Ruth, they depend from one of the independent claims 1 or 5 and have all limitations thereof. Therefore these dependent claims are allowable for the same reasons asserted for claims 1 and 5 above. With regard to dependent claims 3 and 8 rejected under 35 U.S.C. 103(a) as being obvious over Ruth in view of Tate, they depend from independent claims 1 and 5 and have all limitations thereof. Therefore these dependent claims are allowable for the same reasons asserted for claims 1 and 5 above.

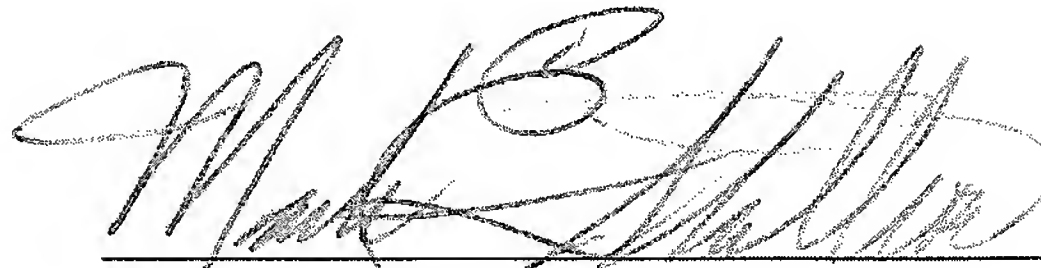
Therefore the applicant respectfully asserts that claims 1-8 as amended are in condition for allowance and should be allowed to proceed to issue.

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner’s amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant’s undersigned attorney in this regard.

Application of: James W. Woodcock
Serial No.: 10/707,904
Amendment After Final

Respectfully submitted,

Date: June 09, 2006

A handwritten signature in dark ink, appearing to read 'Mark E. Stallion', written over a horizontal line.

Mark E. Stallion
Reg. No. 46,132
Blackwell Sanders Peper Martin LLP
720 Olive Street, Suite 2400
St. Louis, MO 63101
314-345-6000
ATTORNEYS FOR APPLICANT